

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)	
PROFESSIONAL REGULATION,)	
DIVISION OF FLORIDA LAND SALES,)	
CONDOMINIUMS, AND MOBILE HOMES,)	
)	
Petitioner,)	
)	
vs.)	Case Nos. 03-3208
)	03-3209
CLARCONA RESORT CONDOMINIUM)	
ASSOCIATION, INC.,)	
)	
Respondent.)	
<hr style="width: 40%; margin-left: 0;"/>)	

ORDER ON MOTION FOR CLARIFICATION

On March 4, 2004, the Petitioner filed a Motion for Clarification and Amendment of the Recommended Order (Motion) issued on February 16, 2004, in this case. The Motion states that the Respondent has no objection to the Motion.

The Motion asserts that the Recommended Order applies an incorrect burden of proof to the evidence presented during the hearing. Paragraph 17 of the Recommended Order states that the "Petitioner has the burden of proving the allegations . . . by a preponderance of the evidence."

Neither the Petitioner nor the Respondent addressed the issue of the applicable standard of proof in the Proposed Recommended Orders filed by the parties following the hearing. Both parties now apparently agree that the Petitioner must establish the allegations by "clear and convincing evidence" and seek to have the undersigned "reweigh" the evidence.

The misstatement of the burden of proof in the Recommended Order does not alter the outcome. The essential dispute in the case was clear: whether the Respondent provided timely access pursuant to statutory requirements to records requested by residents. The evidence was likewise clear; as set forth in the Recommended Order, the Respondent failed to provide timely access to the requested records. Accordingly, it is hereby

ORDERED that:

Paragraph 17 of the Recommended Order is amended to read as follows:

17. The Petitioner has the burden of proving the allegations in the Notices to Show Cause by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 952 (Fla. 1996). In this case, the burden has been met.

DONE AND ORDERED this 8th day of March, 2004, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of March, 2004.

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